

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CHARLES LAMONT NORWOOD,

Petitioner,

v.

ORDER

08-cv-446-bbc

DON STRAHOTA, Security Director,
SERGEANTS HILBERT and PHILLIPS,
WARDEN MIKE THURMER,
CAPT. O'DONOVAN,
JAMES MUENCHOW, ICE,
MICHAEL MEISNER, ICE,
THERESA MURPHY, ICE,

Respondents.

On August 19, 2008, I entered an order in this case directing that plaintiff pay no later than September 10, 2008, \$.81 as an initial partial payment of the \$350 fee for filing this case. Now plaintiff has filed a document titled "Motion to Compel" (Dkt. #19), in which he asks this court for an order directing the financial office at the Waupun Correctional Institution to send the initial partial payment to this court. I construe plaintiff's motion as a motion for an enlargement of time within which to pay his initial partial payment.

In support of his motion, plaintiff points out that although a deposit was made to his account on August 28, 2008, the financial office is refusing to disburse the initial partial payment he has been ordered to pay. Instead, as the supplemental trust fund account statement attached to plaintiff's motion shows, on August 28, 2008, when a \$2.40 deposit was made into his account, financial officers applied \$.98, \$.48, \$.38 and \$.31, respectively, toward fees plaintiff owes for filing four other lawsuits, and set aside only \$.25 toward the payment of plaintiff's initial partial payment in this case. (The institution appears to be holding this amount, because no \$.25 payment has been received to date.)

Perhaps officials in the financial office at Waupun are confusing their obligations under 28 U.S.C. § 1915(b)(2) with their obligations under § 1915(b)(1). Section 1915(b)(1) governs initial partial payments. It requires that the court shall collect initial partial payments "when funds exist." Section § 1915(b)(2) applies *after* the initial partial payment has been made. It allows agencies having custody of a prisoner to wait to forward payments from the prisoner's account to the clerk of the court until "the amount in the account exceeds \$10."

Although the Court of Appeals for the Seventh Circuit has not determined the priority to be given to a prisoner's monthly payment obligations under § 1915(b)(2), it has ruled that initial partial payments are to "come off the top of the next deposit of prison wages" Walker v. O'Brien, 216 F.3d 626 (7th Cir. 2000)(district court erred in failing

to collect initial partial payment from inmate receiving periodic income that had been directed elsewhere). Nothing in the statute authorizes prison officials to refuse to make an initial partial payment simply because a prisoner owes payments on other obligations, or because the amount in the prisoner's account does not exceed \$10. Therefore, I will extend the deadline within which plaintiff is to pay the \$.81 initial partial payment he has been directed to pay in this case. In addition, I will send a copy of this order directly to the warden of the institution and ask that he take whatever steps are necessary to see to it that the initial partial payment ordered in this case is paid from the next deposit to plaintiff's account.

ORDER

IT IS ORDERED that plaintiff's "Motion to Compel" (Dkt. #19), construed as a motion for an enlargement of time within which to pay the initial partial payment in this case, is GRANTED. Plaintiff may have an enlargement of time to October 1, 2008, in which to submit a check or money order made payable to the clerk of court in the amount of \$0.81. In order to insure payment of the assessed amount, I am sending a copy of this order to plaintiff's warden and requesting that he take whatever steps are necessary to see to it that

the initial partial payment is paid from the next deposit made to plaintiff's account.

Entered this 17th day of September, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge